

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAVID RUBMAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
UNITED STATES CITIZENSHIP AND	)	
IMMIGRATION SERVICES (USCIS), and	)	
UNITED STATES DEPARTMENT OF	)	
HOMELAND SECURITY (DHS),	)	
	)	
	)	
Defendants.	)	

COMPLAINT

1. This is an action under the Freedom of Information Act (óFOIAô), 5 U.S.C. § 552, seeking to enforce plaintiff's right to obtain full and accurate disclosure of government agency records.

PARTIES

2. Plaintiff David Rubman is an attorney who practices immigration law in Chicago. He resides within the jurisdiction of the Northern District of Illinois.

3. Defendant United States Citizenship and Immigration Services (USCIS) is a department of the Executive Branch of the United States Government. USCIS is an áagencyô within the meaning of 5 U.S.C. 552(f)(1). USCIS is part of the United States Department of Homeland Security.

4. Defendant United States Department of Homeland Security (DHS) is a department of the Executive Branch of the United States Government. DHS is an "agency" within the meaning of 5 U.S.C. 552(f)(1).

JURISDICTION

5. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

VENUE

6. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

LEGAL BACKGROUND

7. The H-1B visa category is available for professionals coming to work for an employer in the United States. Congress set an annual quota of 85,000 aliens who may be issued H-1B visas each fiscal year. 8 U.S.C. 1184(g)(1)(A)(vii) and 1184(g)(5)(C). This quota is normally referred to as the "H-1B cap."

8. Because many more than 85,000 applicants seek H-1B visas each year, USCIS has established a procedure for handling applications. The USCIS regulation at 8 C.F.R. 214.2(h)(8)(ii)(B) requires that USCIS make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS must monitor the number of petitions received and notify the public of the date that USCIS has received the necessary number of

petitions (the final receipt date). Once that date is reached, USCIS accepts no more H-1B applications for the fiscal year.

9. In each of the last 9 fiscal years, USCIS stopped accepting applications for H-1B visas before the end of the fiscal year, claiming that the cap had been reached.

10. USCIS has never publicly disclosed data regarding its projections, its monitoring of the number of petitions received, or the actual number of approved petitions in each fiscal year, making it impossible for plaintiff and the general public to know if it is accepting sufficient number of applications to meet the obligation to issue 85,000 visas.

THE FOIA PROCEEDINGS

11. Plaintiff submitted his FOIA request to USCIS by letter dated May 10, 2012. (Exhibit 1). The request asked for all documents reflecting statistics related to the number of applications, approvals, denials and withdrawals for cap-subject H-1B cases assigned a receipt for each of the fiscal years 2009, 2010, 2011, 2012. Plaintiff also invited USCIS to contact him if it had any question regarding the types of documents he sought. *Ibid.*

12. On September 17, 2012, USCIS responded with a one page table containing what it later admitted was not the requested data and three other pages that did not contain meaningfully responsive information. (Exhibit 2).

13. The September 17, 2012 data did not segregate cases assigned a receipt for each of the requested fiscal years. Instead, the data listed all cases received and adjudicated during a fiscal year, regardless of the receipt year. This seemingly minor difference has large ramifications because USCIS accepts H-1B applications six months before the start of a fiscal year, but assigns such cases receipts for the coming fiscal year. For example, FY 2012 runs from

October 1, 2011 to September 30, 2012. The September 17, 2012 data shows all applications received during that time period and all applications adjudicated during that time period. But, USCIS started accepting H-1B application for FY 2012 on April 1, 2011, which is in the previous fiscal year. Any applications received and/or adjudicated from April 1, 2011 to September 30, 2011 (which is the vast majority of such applications for the fiscal year) are assigned in the September 17, 2012 data to FY 2011. This response thus does not show the actual H-1B statistics for a given fiscal year.

14. On October 1, 2012, plaintiff wrote to USCIS to point out that the wrong data was provided in the September 17, 2012 response. (Exhibit 3).

15. On October 12, 2012, USCIS provided a one-page substitute response containing a new set of data purportedly run on October 4, 2012. (Exhibit 4).

16. On October 22, 2012, plaintiff wrote to USCIS to complain that the October 12, 2012 data was statistically inconsistent with the first FOIA response and other publicly available data (Exhibit 5). The crux of the inconsistency is that the September 17, 2012 data for the period October 1, 2007 to June 30, 2012 shows 143,090 denied cases, while the October 12, 2012 data that covers the period April 1, 2008 to September 30, 2012 shows only 33,125 denials. The October 12, 2012 data covers almost the same period but shows almost 90,000 fewer denials. It is logically and statistically impossible for the October 12, 2012 data to be reconciled with the September 17, 2012 data. Moreover, as plaintiff explained in his October 22, 2013 letter, the September 17, 2012 data is consistent with previously published USCIS data. It is the October 12, 2012 data that is inconsistent with all previously published data.

17. Because of the inconsistencies, the October 22, 2012 letter reiterated plaintiff's request for all documents related to the H-1B data, not just a one page summary.

18. On November 14, 2012, USCIS responded to plaintiff's October 22, 2012 letter (Exhibit 6). USCIS refused to produce any additional information and explained why it believed there was no inconsistency between the data sets. It refused to produce additional documents on the ground that such documents would be confusing.

19. Although no appeal rights were given in any of the USCIS letters, on January 2, 2013, plaintiff submitted an administrative appeal to the Associate General Counsel of the Department of Homeland Security under the department's regulation at 6 C.F.R. 5.9(a) (Exhibit 7).

20. On June 5, 2013, USCIS rejected Plaintiff's appeal and refused to provide any additional documents. (Exhibit 8).

CLAIM FOR RELIEF

21. The FOIA requires that agencies make records promptly available to any person who follows agency regulations in making the request. 5 U.S.C. 552(a)(3)(A).

22. Plaintiff followed DHS and USCIS regulations in making his request and appealing the agency response.

23. The FOIA further requires that agencies make reasonable efforts to search their records in whatever format they may exist to respond to a request. 5 U.S.C. 552(a)(3)(C);

24. Defendant DHS has failed to make reasonable efforts to search for or produce responsive agency records because it believes such records would be "confusing."

25. Plaintiff has exhausted his administrative remedies.

REQUEST FOR RELIEF

WHEREFORE, plaintiff requests that the Court:

- A. Declare that the Defendants' refusal to produce the requested information requested is unlawful;
- B. Enjoin and order Defendants to release to plaintiff the requested documents;
- C. Award Plaintiff his costs and attorney fees in this action; and
- D. Grant such further relief as is just and proper.

/s/ Scott D. Pollock

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